IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1098 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAHEDA BEGAM WD/O SAIYAD ZIAUDDIN A MADANI
Versus
KUBRA BEGAM WD/O SAIYAD AZIMDUDDIN KAMALUDDIN

Appearance:
1. First Appeal No. 1098 of 1982
MR ASIFKHAN I PATHAN for Petitioner No. 1
MR ABRARALI S SAIYED for Petitioner No. 1
NOTICE SERVED for Petitioner No. 2-4
NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 19/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Jaheda Begum widow of Saiyed Ziauddin Azimuddin Madani and others - appellants (original claimants) have filed this first appeal under Section 110(d) of the Motor Vehicles Act, 1939, against the judgment and award dated 12th February, 1982, passed by the Motor Accident Claims Tribunal, Valsad at Navsari, in Motor Accident Claim Petition No.207 of 1980.

2. The brief facts giving rise to this appeal are as under:-

2.1 The appellants original claimants filed a claim petition before the tribunal and alleged that on 21.8.1980 at about 8 to 8.30 p.m. Udaysing Rupsing Garasiya driver of the S.T.Bus No.GRT 6876 was driving. The bus was bound for Dahod to Valsad. The said bus passed on the main road leading towards Kaliyawadi Navsari. It was alleged that opponent No.1 was driving the said bus in a rash and negligent manner near octroi naka. It was stated that Saiyed Ziauddin - deceased was going on Luna motor cycle towards his house and he was driving the Luna motor cycle on the left side of the road. The bus driver while tried to overtake the Luna was dashed with the Luna and knocked down deceased. The deceased had sustained fracture of the skull and had received other injuries. He was immediately removed to Civil Hospital Navsari by rickshaw where he was declared dead.

2.2 In the claim petition it was further alleged that the cause of the death was due to rash and negligent act of the driver who was driving the S.T.Bus. This incident was witnessed by Maiuddin Rafiyuddin Exh.55 and others. The information was conveyed to the doctor of the Civil Hospital Navsari who informed Head Constable Ratan Narayan who was in charge of Navsari Police Station at about 8.40 p.m. The offence was registered under Sections 279, 404 A of the Indian Penal Code and under Sections 112, 116 and 89 of the Motor Vehicles Act. The driver of the bus did not stop the bus on the spot but he ran away with the bus.The inquest panchanama was drawn on the dead body of Ziyauddin. After the investigation was over chargesheet was submitted before the Court against opponent No.1.

2.3 In the criminal case being criminal case No.20/81 the court convicted the driver of the bus by the judgment and order dated 26th June, 1981, by the learned Chief Judicial Magistrate, Valsad at Navsari.

2.4 It was alleged by the claimants that they were dependents on the income of the deceased and deceased was aged about 34 years at the time of incident. The deceased was B.Sc. and he was getting consolidated pay of Rs.490/- per month. Over and above he was also carrying on business of selling milk and was getting Rs.450/- p.m. after deducting expenses. It was alleged that after the death of the deceased, the said business has suffered a lot. The deceased was collecting the bills, was doing other work. After his death a person employed for the distribution of the milk. It was alleged that because of his untimely death the claimants have suffered loss of income to the tune of Rs.400/- per month from the milk business. It was also alleged that the claimant No.5 is having agricultural lands ad-measuring 10 Acres and 11 Gunthas in the sim of Munsad Village. The said lands were being cultivated under the personal supervision of the deceased. It was also stated that they had suffered a permanent loss of income of Rs.800/- per month from the agricultural operation as the lands cannot be supervised by the deceased in this behalf. In all, the claimants have suffered a loss of Rs.1690/- per month and in all they have claimed Rs.3,50,000/- before the tribunal.

2.5 The opponent No.1 driver of the ST Bus and opponent No.2 ST Corporation filed a written statement at Exh.17 contending that the application is not maintainable and they have denied the said facts totally. They have contended that the accident has not happened by S.T.Bus in question. It was contended by the opponents that the accident had not happened by S.T.Bus No.6876 nor the said bus has met with any accident on that day but after the bus had reached Valsad the Depot Manager of Navsari had informed him to bring the bus at Navsari and therefore the driver of the bus had brought it to Navsari. The panchnama of the bus was drawn by the police on the next day. There were no signs or marks of blood on the bus to show that the accident had happened by the said bus.

2.6 In view of the same it was contended that was no liability of the Corporation to pay the compensation to the claimants as the accident had not happened by the said bus.

2.7 The claimants have led oral evidence of one Zahedabegum Ziauddin at Exh.41 widow of deceased, Kubrabegum Azimuddin at Exh.44, Kanjibhai Dahyabhai at Exh.46 regarding proof of agriculture income by deceased,

Pramodbhai Maganlal Patel was examined at Exh.47, Nasiruddin Saiyed Ali a relative of deceased was examined at Exh.48 regarding proof of business of milk by deceased, Maiuddin Rafiuddin was examined at Exh.55, Yusufbhai Ismailbhai was examined at Exh.56 where he deposed that he had seen the accident. Iqbal Mohmed a rickshaw driver was examined at Exh.57 who has also deposed that he had seen the accident. Ratanbhai Narayanbhai, Head Constable of Navsari Police Station was also examined at Exh.59. Deepakbhai Radhunathji Nayak was examined at Exh.69 regarding deceased having member of Gujarat Sahakari Khand Udyog Mandli Ltd. Pradipkumar Thakorlal Gandhi officer of the Maroli Sugar Factory was examined at Exh.70. Sudhirbhai Haribhai Patel was examined at Exh.71 regarding deceased serving at Sky Chem Industries Pvt.Ltd. Nanubhai Gulabbhai Nayak was examined at Exh.72 regarding proof of income from the sale of milk. Saiyed Akhtarhusain Saiyed Usman was examined at Exh.74 regarding the proof of income from the sale of milk.

2.8 The claimants have also produced death certificate of the deceased, panchnama at Exh.37, inquest report at Exh.38 and the copy of the judgment of the criminal case at Exh.40 in this behalf.

2.9 Over and above the claimants have also produced certain documentary evidence to prove the incident as well as to prove the income of the deceased in this behalf.

3. As regards opponents, opponent No.1 Udaysing Rupsing Garasia, driver of the bus has been examined at Exh.86 and Digvijaysinh Abhesinh Parmar conductor of the bus was examined at Exh.87.

4. The Tribunal thereafter heard the matter and ultimately the tribunal by its judgment and award has held that the applicants able to prove that the death of Saiyed Ziauddin Azimuddin Madani was caused by the rash and negligent act of the opponent No.1 in driving the S.T.Bus No.GRT 6876 on 21st August, 1990. The tribunal also held that the opponents failed to prove that the accident had not happened by the S.T.Bus No.GRT 6876 as contended in the written statement. The tribunal, as regards negligence, in para 13 of the judgment came to the conclusion that as there were scratches of about 12 inches in length on the door of the bus which is near the conductor seat. The accident had not happened by the front portion of the bus as stated by the witnesses for the claimants and the contents of the panchnama can be

taken into consideration because the scratches were there and there is no evidence that the deceased dashed by the gumber of the side wheel. However, the tribunal held that therefore there was "contributory negligence" on the part of the deceased. The deceased must have tried to overtake the bus so as to reach his home and while so going he had dashed with the tyre of the bus. At the same time the bus driver was negligent in driving the bus and there was rash act on his part at the time when the exact impact took place. In view of the same the tribunal held that the contributory negligence on the part of the deceased was assessed at 20% and the on the part of the bus driver at 80%.

4.1 As regards income is concerned, the learned tribunal held that the deceased was earning Rs.490/- p.m. at the time of accident, and in view of the oral and documentary evidence produced by the claimants the learned tribunal believed the same and held that because the deceased was died at the age of 34 years the learned tribunal apply multiplier of 15 i.e. 490 x 12 x 15 = Rs.88,200/-.

4.2 As regards business of selling milk is concerned, the learned tribunal assessed the income of deceased at Rs.220/- per month and awarded Rs.39,600/- (220 x 12 x 15).

4.3 As regards agricultural operation and other aspect is concerned, the learned tribunal has held that deceased was serving in private organisation and also carrying business of milk and therefore the expected loss of income from the agricultural lands would come to Rs.72,000/- (400 x 12 x 15). In all the learned tribunal has awarded Rs.1,76,400/- in this behalf.

4.4 Being aggrieved and dissatisfied with the said judgment and award, the appellants have filed appeal before this Court for claiming higher compensation in this behalf. We have heard Mr.Asifkhan Pathan and Mrs.Maya Desai for respective parties at length. We have gone through the oral as well as documentary evidence.

REGARDING CONTRIBUTORY NEGLIGENCE:

5. We have considered the findings of the tribunal regarding contributory negligence in this behalf. In that connection we have considered the oral evidence of Maiuddin Rafiyuddin Ex.55. He has clearly deposed that he had seen the accident in question. He has stated that the accident took place on 21.8.90 at about 8 to 8.30

p.m. and he was sitting on the chair and on otta of his office. He had seen one luna motor cycle coming from Junathana and the S.T.Bus was following the said Luna. He has stated that this bus was from Dahod to Valsad and it was going towards Valsad with more speed. The deceased was driving the Luna on the left side of the road and it was at little distance from the edge of the road. His evidence reads that the front portion of the cleaner side of the bus had dashed against the motor cyclist and it was dragged upto certain distance and then the driver had fallen down. He further stated that the bus had gone away from there and did not stop. The driver of the motor cycle was taken away to the hospital and at that time he was declared dead.

5.1 We have also considered Panchanama Ex.37 in this behalf where also it was clearly stated that there were scratches of about 12 inches in length on the door of the bus which is near the conductor seat.

5.2 It may also be noted that a criminal prosecution was also lodged against the driver. The learned Chief Judicial Magistrate by his judgment and order dated 26th June, 1981, also pleased to convict the driver of the bus. That judgment has been produced at Exh.40 in this behalf.

6. In view of the oral evidence of Maiyuddin Rafiyuddin, Panchanama and judgment of the criminal court, we are of the view that the findings of the tribunal that deceased must have made some contributory negligence and to that extent the learned tribunal has deducted 20% of compensation is not correct and legal. The same is contrary to and inconsistent with the evidence which we have discussed in this behalf.

7. The findings of the learned tribunal that the luna driver wanted to overtake the bus is not factually right because the luna driver was ahead of the bus. In fact ST driver wanted to overtake the Luna motor cycle in this behalf. The luna driver was on the left side of the road and luna is a small vehicle whereas ST is a big vehicle and therefore it was a duty of the driver of the S.T.Bus to take care and caution while driving the bus in this behalf.

7.1 In our view the expression "contributory negligence" applies solely to the conduct of the claimant. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission

being of such a nature that it may properly be described as negligence. We are of the view that in view of the facts and circumstances of the case, the opponents No.3 and 4 namely driver of the bus and the corporation alone were negligent and responsible for causing death of the luna driver. They were solely responsible for the same. The deceased was not at all responsible for the death caused to him. In view of the same the claimants would succeed in this case fully. In view of the same the findings of the tribunal that deceased was guilty of contributory negligence and this can be assessed at 20% and bus driver at 80% is clearly errorneous and same is required to be quashed and set aside. In view of the same the findings of the tribunal to that extent is modified in this behalf.

7.2 In view of the conclusion which we have reached and the evidence which we have discussed, in our view the appellants have failed to establish any negligence on the part of the driver of Luna which dashed with S.T.Bus.In our view, the S.T.Bus has dashed with the Luna on which the deceased was moving on the date of occurrence and accordingly the award of the tribunal qua contributory negligence is clearly assailable and same is required to be quashed and set aside.

8. As regards income of the deceased, the deceased was serving in Sky Chem Industries Pvt.Ltd and that has been duly proved by oral evidence of Pramodbhai Maganlal Patel Ex.47 that deceased was drawing Rs.490/- p.m. salary in this behalf. That evidence has not been challenged by the ST Corporation. We have gone through the reasonings of the learned tribunal in this behalf as deceased was about 34 years of age the learned tribunal has rightly apply multiple of 15 and for that the deceased was entitled Rs.490 x 12 x 15 = Rs.88,200/-. It may be noted that the wife of deceased and mother of deceased was also examined in this behalf.

9. As regards income from the distribution of milk is concerned, the claimants have examined Nasiruddin Saiyed Ali at Exh.48 and also Nanubhai Gulabbhai Naik at Exh.72. In view of the evidence in this behalf it was established that deceased was carrying on business of distributing and selling of milk and for that the claimants have claimed Rs.400/- p.m. The learned tribunal has rightly held that deceased was getting Rs.220/- p.m. and thereby the learned tribunal has awarded Rs.220 x 12 x 15 = Rs.39,600/-.

10. It was also alleged by the claimants that deceased was supervising the agricultural operation in this behalf and claimed compensation. On that heading also the claimants have examined one Kanjibhai Dahyabhai at Ex.46 to prove that deceased was supervising the agricultural operation with his family as 10 Acres of land in this behalf. The learned tribunal has also observed that as deceased was serving in a private organisation and also carrying on business of milk, the deceased could only supervise the agricultural organisation only in the morning and in the evening and therefore the learned tribunal has awarded Rs.400/- p.m. We are of the view that the learned tribunal has rightly come to the conclusion regarding this aspect and awarded Rs.400/- p.m. in this behalf.

11. In view of this, the total compensation payable to the claimants are as under:

(1) Rs.88,200/- regarding salary.
(2) Rs.39,600/- regarding sale and distribution of milk.
(3) Rs.72,000/- regarding income of agricultural operation.

12. The learned tribunal after awarding the same has deducted 20% due to contributory negligence of the claimants in this behalf. But as we have examined oral evidence and panchanama, we have come to the conclusion that the findings of the learned tribunal regarding deceased contributory negligence is not correct, and in view of the same the claimants are entitled in all Rs.1,76,400/- in this behalf. We are also confirming the findings of the learned tribunal that the claimants are entitled Rs.10,000/- as loss to the estate, Rs.5000/- for other expenses. So in all Rs.1,76,400/- + Rs.10,000/- + Rs.5,000/-, the total amount comes to Rs.1,91,400/-.

13. In view of the same the appeal is partly allowed to that extent. We are setting aside the judgment and award of the tribunal so far as the tribunal has deducted 20% towards contributory negligence is concerned, and the other findings of the tribunal are confirmed. The claimants shall get compensation of Rs.1,76,400/- with proportionate costs together with interest at the rate of 6% per annum from the date of the application till realisation from the respondents who are jointly and severally liable to pay the same. It may be noted that whatever the amount paid by the opponents pursuant to the order of the tribunal the same may be deducted in this behalf and whatever the amount invested in the fixed

deposit shall also be paid to the claimants in this behalf.

(K.R. Vyas, J.)

(K.M. Mehta, J.)

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